

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 168 of 1997
in
SPECIAL CIVIL APPLICATION No. 825 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K. THAKKER
and
MR.JUSTICE S.D. PANDIT

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

JAMIL AHMEDKHAN S.KALYANI

Versus

STATE OF GUJARAT

Appearance:

MRS DT SHAH for Petitioner
SERVED BY DS for Respondent No. 1, 7, 8
MR DA BAMBHANIA for Respondent No. 2
MR DG CHAUHAN for Respondent No. 4

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE S.D.PANDIT

Date of decision: 06/08/97

ORAL JUDGEMENT

Admitted.

Mr. D.A Bambhani, learned AGP for respondent No. 1 and Mr. D.G Chauhan, learned advocate for respondent Nos. 2 to 8 waive service of notice of admission. In the facts and circumstances of the case, matter is taken up for final hearing today.

This appeal is directed against an order passed by the learned Single Judge in Special Civil Application No. 825 of 1997, dated July 23, 1997. The grievance voiced in the present appeal is against non-payment and recovery of bonus amount. The case of the appellant was that the Bonus amount was paid to him legally and in accordance with law, and it is not open to the respondent-Authorities now to order recovery. The case of the respondents, on the other hand, is that though the appellant was not entitled to bonus, through oversight and mistake, the said amount was paid, and hence, the authority had power to correct its mistake and to effect recovery. Accordingly, an order was passed for recovery of amount and it was to be recovered in installments.

After the matter was placed before a Division Bench, notice was issued on March 12, 1997 and was made returnable on 26th March, 1997. In Civil Application No. 2498 of 1997, ad-interim relief against recovery was also granted. It is not disputed by and between the parties that the ad-interim relief is operative till today. It was, however, stated at the bar that before ad-interim relief was granted by the Division Bench some installments have already been recovered. Almost in similar circumstances, in Special Civil Application No. 10437 of 1996, which came up before the learned Single Judge, a following order was passed on 23rd July, 1997.

"Rule.

Mr. K.N Shashtri for Mr. D.A Bambhani, Addl.

Government Pleader waives service on behalf of Respondent No. 1 and Mr. D.G Chauhan waives service on behalf of Respondents No. 2 to 8 respectively.

It is submitted that the Bonus amount was sought to be recovered in ten installments in terms of the order passed by the respondent No. 8 i.e., Executive Engineer (R & B), Gujarat Agricultural University, Junagadh. It is further submitted that eight installments have already been

recovered from the petitioner No. 2 and Mr. D.T Shah has submitted that controversy in this Special Civil Application is confined only to the recovery of the Bonus in respect of petitioner No. 2. Only two installments therefore remain to be recovered for the months of February and March, 1997 from respondent No. 2. For the aforesaid two installments with regard to the recovery of the Bonus amount paid to the petitioner No. 2 it is submitted that the petitioners would approach the authority under the Payment of Wages Act. In the facts and circumstances of this case, it is ordered that till the matter is decided by the authority under the Payment of Wages Act, the respondents No. 2 to 8 shall not effect the recovery of these two installments and the parties would wait for the decision to be rendered by the authority under the Payment of Wages Act. This Special Civil Application is partly allowed and the Rule is made absolute in the terms as aforesaid. No order as to costs."

Mrs. Shah, learned counsel for the appellant states that the appellant is also willing to approach Payment of Wages Authority constituted under the Payment of Wages Act. In these circumstances, in our opinion, interest of justice would be served if, as observed by a learned Single Judge, in the aforesaid order, in this Letters Patent Appeal also, no recovery will be affected till the authority decides the matter. So far as amount which has already been recovered, it is clarified that it will be subject to the final decision by the authority. The remaining recovery will not be affected till the decision of the authority. Appeal is accordingly disposed of. In the facts and circumstances of the case, no order as to costs.

{C.K Thakkar, J.}

{S.D Pandit, J.}

Prakash*